

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANEL SYKES,

Plaintiff,

CASE NO.: 2:07-CV-14587

vs.

DISTRICT JUDGE LAWRENCE P. ZATKOFF
MAGISTRATE JUDGE STEVEN D. PEPE

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

/

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL (Dkt. # 15)

On October 25, 2007, Defendant, State Farm Fire and Casualty, citing diversity jurisdiction (28 U.S.C. § 1332), filed a motion to remove Plaintiff's suit from state to federal court (Dkt. # 1).

On December 10, 2007, Defendant served Plaintiff its Request for Production of Documents, and on January 7, 2008, its Interrogatories (Dkt. # 15, Exs. A & B). The responses were due January 14 and February 11, 2008, respectively.¹ Plaintiff did not respond to the motion to remove² nor the discovery requests within the required time frames.

On April 21, 2008, Defendant's counsel notified Plaintiff's counsel that it was still awaiting the requested discovery materials. *Id.* at Ex. C. On May 6, 2008, Defendant filed a Motion to Compel Discovery Responses (Dkt. # 15). On May 12, 2008, this motion was referred to the undersigned, and a July 2, 2008, telephonic hearing was scheduled (Dkt. # 16 & # 17).

¹ Federal Rules of Civil Procedure 26 and 33 require responses to these discovery requests within thirty days; Fed. R. Civ. P. 6 (d) and this Court's Electronic Filing Policies and Procedures R. 15(b) add three days for mail and electronic service; Fed. R. Civ. P. 6 (a) extends dates ending on weekends and holidays to the following business day.

² Local Rule 7.1(d)(2)(B) provides that "a response to a nondispositive motion must be filed within 14 days after service of motion."

Plaintiff has not responded to this motion to compel. Local Rule 7.1 provides that “oral hearings on all other motions will be held unless the judge at any time prior to the hearing orders their submission and determination without oral hearing on the briefs filed as required by this rule.” Local Rule 7.1(e)(2). In lieu of the July 2, 2008, hearing, it is **ORDERED** that Defendant’s motion to compel discovery will be determined on the papers without oral hearing. For reasons noted below that motion is **GRANTED**.

Federal Rule of Civil Procedure 37 provides that “on notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). Federal Rule 37 also provides for the imposition of sanctions for the failure to comply with a court order. Fed. R. Civ. P. 37(b).

Federal Rule 37 “establishes the mechanisms” by which other rules of discovery “can be made effective.” 8 WRIGHT, MILLER & MARCUS FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2281. Rule 37 provides that “serious consequences,” including dismissal of a claim, may be appropriate for “any party or person who seeks to evade or thwart full and candid discovery.”

Id. Under this Rule, Defendant has filed numerous motions seeking Plaintiff’s compliance with discovery.

Federal Rule of Civil Procedure 41 provides for involuntary dismissal when “the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b). *See Link v. Wabash R. Co.*, 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734, 6 Fed. R. Serv. 2d 831 (1962) (Court may *sua sponte* dismiss case on account of plaintiff’s failure to prosecute). Federal Rule 41(b) grants district courts the inherent authority to involuntarily dismiss a suit “if the ground for dismissal is want of prosecution.” 9 WRIGHT, MILLER & MARCUS FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2369. To date, Plaintiff has neither complied with or objected to

Defendant's discovery requests.

Accordingly, **IT IS ORDERED** that on or before Thursday July 10, 2008, Plaintiff shall respond to Defendant's discovery requests with full and complete answers the time for objections having passed.³

NOTICE TO PLAINTIFF – failure to comply with this order may result in dismissal of your law suit under Fed. R. Civ. P. 37 and 41.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d).

So Ordered.

Date: June 24, 2008.
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on 6/25/08.

s/Jermaine Creary
Deputy Clerk

³ Having failed to timely object to them, Plaintiff has waived any objections it might have asserted with respect to Defendant's discovery requests. See 8A C. Wright, A. Miller & R. Marcus, FEDERAL PRACTICE AND PROCEDURE, § 2173, (2008), and extensive case authority cited therein.